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ART. I. — *A Historical Account of the Neutrality of Great Britain during the American Civil War.* By MOUNTAGUE BERNARD, M. A., Chichele Professor of International Law and Diplomacy in the University of Oxford. London: Longmans, Green, Reader, and Dyer. 1870.

THE late war of the Rebellion suddenly brought the United States into a very novel position. We had enjoyed almost unbroken peace since the acknowledgment of our independence by Great Britain, in 1782; and the single important war of the present century to which we were parties had had its rise in violations of our rights of neutrality. But now, all of a sudden, we became belligerents, before either the country or the government was fully acquainted with the new part we had to act. Would it be strange if a nation so situated should abandon its old ground, should stretch belligerent and contract neutral rights, or should even make claims which it had contested when they were advanced by others? Then another peculiarity of our situation lay in the nature of our institutions. Such a federal union had not been known before at all, and a disruption on so vast a scale was new to history and to international law. The organizing power, so strikingly cultivated under our forms of liberty, and the proximity to one another of States having a common interest and common apprehensions, made it easy for them to secede and form a new union, — as

easy, in fact, as it is, under the facile divorce laws of some of the States, for a wife to rid herself of her husband and take another. This sudden birth of a new confederation, ready for defence or aggression, gave to the foreigner an impression of a want of coherence between the parts of the Republic, of a fatal weakness at the centre of our system, which augured a vain attempt to repress revolution either by force, or by concession which would forever enfeeble the general government. And as soon as the struggle began, it seemed, when looked at from abroad, like a full-blown war,—a war, too, over so vast a territory, and against a foe so well organized and so determined, that the issue was not doubtful. Who would not call the parties to the revolt belligerents? On the other hand, from our point of view, the movement at the South appeared like one of the many threats that had been made before: it meant no permanent withdrawal from the Union; it would need marshals and district judges, rather than generals and commanders of ships; a few months would bring wisdom back into feverish minds, especially when they found that at the North no active help was to be hoped for. The government, therefore, was unwilling to admit that a war was upon us, while it took war measures; the enemy was not a belligerent; and if we had had ships enough to set on foot a rigorous blockade of all the Southern coasts, scarcely any levies of troops would be needed. The courts and district attorneys would soon do their work in the restoration of civil order. If we add the consideration that civil war grows from small beginnings, without announcing itself or revealing what it is to be, it is evident that a difference of opinion on various questions touching the conflict might arise, according as it was watched from near at hand or from across the ocean.

Another point deserving attention, in regard to the contest, was the new questions to which the progress of society during the last half century might give birth. Since the downfall of Napoleon, there had been but short and local wars in Europe. Neutral interest had vastly increased in importance, when weighed against belligerent interests. The Declaration of Paris in 1856 had put a new face for nearly all the nations of Europe on most of the relations of belligerents and neutrals, about which there had been no agreement. The new way of

navigating by steam would render it easier to break blockade, and would spread belligerent vessels over the world, if they could only have a supply of coal. What liberties would neutrals concede in regard to such supplies? Would they change their policy as it respected bringing prizes into their ports? Questions never asked before would now have to be asked and answered.

It was not strange that a war so remarkable in its origin and in its nature, and waged at such an epoch of the world, fastened upon it the attention of the publicists of Europe, some of whom, in their discussions of questions that arose during its progress, have contributed not a little to the science of international law. Soon after the affair of the Trent was known in Europe, a professor in an inland university of Germany — Marquardsen of Erlangen, in Bavaria — gave to the world what is, perhaps, the most satisfactory essay on the points of law involved in that transaction. The speculations of Hautefeuille are better known and less valuable. The essays of "Historicus," especially on the recognition of revolting provinces, were timely and serviceable to the cause of order. Our author, also, who had been for a number of years the Chichele Professor of International Law and Diplomacy at Oxford, gave promise, so to speak, of a larger treatment of the subject by publishing, in 1861, two lectures on the war in America. He had been before known by his valuable contribution on the laws and usages of war, which appeared in the Oxford essays of 1856, and has since published a small work on diplomacy in general, and more especially as illustrated by the peace of Westphalia. In his present work he has performed a service for which the students in his science will be grateful; he has gone over the whole field of claims and questions to which our civil war gave birth. In most of these questions England, as the leading neutral and the principal commercial country, was directly and mainly concerned. A work, therefore, entitled "*A Historical Account of the Neutrality of Great Britain during the American Civil War,*" if faithful to its subject, must be a history of international law, so far as its rules were discussed between the United States and the other states of the Christian world.

A work of such a kind must be estimated by its spirit, by its

plan, and by the success of the execution. Of the spirit we will let Mr. Bernard speak for himself: —

“ A writer who undertakes to deal with questions lately disputed, — some of them still in dispute, — between a foreign government and his own, can scarcely hope to be perfectly impartial. But he is bound, before expressing any opinion, to clear his mind from any conscious bias, and he has a right to expect the same sincerity from others. America has many jurists, especially in the department of international law, whom it would be an impertinence to praise. . . . They will feel as I do, that, divided as we are, and must be, by our national sympathies, we yet owe, as jurists, the highest candor to one another. If I fail in that duty, — if I attempt to apply to America any rule which I should hesitate to apply, under like circumstances, to England, — I am justly to blame, and what I write deserves no attention. International law knows no country; in aim and intention, at least, its rules are uniform and universal, though the conception of them has varied more or less in different places, according to differences of national policy, of local jurisprudence, or of the traditions in which statesmen and lawyers are bred. What it prescribes to any one state, that it imposes on all; and the body of opinion which it represents, and the judgment to which, in cases of controversy it appeals, are those, not of England or of America, of Germany or France, but of the whole civilized world.”

We bear our testimony, after a careful examination of Mr. Bernard's work, to his upright intention and his prevailing spirit of candor and impartiality. And this will be regarded as very high praise by all who are familiar with the history of opinions on international law; above all, by those who have noticed the sharp lines which formerly separated the jurists of the Continent from those of England, as it regards certain maritime relations between belligerents and neutrals. The example of our author is indeed a model for those on this side of the water who cultivate the same field of science. It is harder for us to be impartial, because we were *de facto* the injured party in the war, which owed its wearisome length and its immense cost in no small degree to the ship-builders and blockade-runners of neutral powers, or rather of a single neutral power. We imputed the injury which we suffered to moral wrong, of which the state or states from within whose borders the evil proceeded were guilty, forgetting that international law, like municipal, must allow much evil to go on for the sake

of a greater good, and forgetting also that our own principles and example when we were neutrals furnish precedents to other neutrals when we became belligerents. If the fairness and coolness of a writer like Mr. Bernard should influence the spirit of American discussion, there would be hope of a speedier solution of certain questions between belligerents and neutrals which must arise hereafter in every important war.

Mr. Bernard's plan is indicated by the title of his work, "*A Historical Account of British Neutrality*," etc. No other method would have been equally satisfactory. The questions discussed between the two governments grew out of particular cases, and the application of particular rules of law; these questions changed during the progress of the war; they could be best understood after a somewhat detailed recital of the circumstances; it was important to give the leading arguments of diplomacy on both sides. In fact, the historical method is alone competent to answer the great question whether, with the progress of intercourse between all parts of the world, the interests of neutrals and belligerents must not be harmonized on somewhat new principles; whether the experience of a vast war like our recent one, as looked at by dispassionate jurists, will not lay a foundation for important reforms in this branch of jural science.

For one thing we are sure that many will be thankful to Mr. Bernard, — for the extracts from state papers in which the leading questions of interest are discussed. Certainly those who know what a weariness to the flesh it is to rummage through volumes of diplomatic correspondence, to go from book to book without finding the passage desired, or to fail of finding it because the volume is missing in an imperfect library of political science, — and all public libraries in this country are imperfect, — will appreciate the labor and the service of our author in making so many important documents accessible to all.

Professor Bernard introduces his work by a series of chapters in which the causes of the war, near and remote, and its first events until after the battle of Bull Run, are succinctly, but very clearly and fairly, described. One extract will show his estimate of the nature of the revolt, as well as of the diffi-

culties with which the United States had to contend in putting it down : —

“ The revolt of the Confederate States has some characteristic features. We cannot fail to be struck by the celerity with which the revolted communities established a regular government, the long interval which was suffered to elapse before any attempt was made to reconquer them, and the footing of equality on which the combatants met at their first encounter in the field. The explanation of these things is easy and lies on the surface of this narrative. The eleven States were completely organized as self-governed communities, before they attempted to sever their connection with the Union ; as a Confederacy they had only to reproduce and set in motion a machinery with the working of which they were perfectly familiar, and of which both the model and the materials were ready to their hands. Yet, could the Federal government have marched an army on Charleston as soon as South Carolina issued her declaration of independence, the revolt might have been crushed in its infancy, and the Union might have been saved from years of devastation and carnage. But the Federal government was paralyzed, not only by its own weakness, but by peculiar restraints and extraordinary difficulties. It had at its disposal no regular army. . . . Further, there is no doubt that the Federal government was really embarrassed . . . by that peculiar reluctance to resort to force which an American government might be expected to entertain. This reluctance, — the consciousness that it was generally felt around him, — the fear lest an attempt to “ invade ” should drive (as in fact it did) the Border Slave States, in whom the feeling was most keen and irritable, into open revolt, — the hope, which many sensible and experienced men were loath to abandon, that attachment to the Union might yet survive, and the Confederacy, if left to itself, crumble away, — these influences speak in Mr. Lincoln’s inaugural address, though they can hardly be said to supply a reasonable account of his policy.”

It may be added to all this, that the government was in a peculiarly helpless condition when the new President came into office, and that the North was too divided in politics to be calculated upon for any immediately efficient policy. It was necessary that the insurrection should begin the armed contest and sever the Union by violence, in order to show to their political friends in the North what they were ready to do. The bombardment of Fort Sumter, therefore, if war was inevitable, was a blessing, because it forced men to choose a positive line of action.

The readiness with which the Southern Confederacy was organized was fitted to make more impression of strength and firm purpose on foreigners than on ourselves. The spirit of political organization is too familiar to us to excite surprise ; and the Constitution of the Confederate States was nothing but the old one altered to provide against the overthrow of slavery. But while something more was needed to persuade us that the Southern movements meant permanent secession, often threatened, but never accomplished before, to the eyes of Europe the Montgomery Constitution meant complete and final disruption, a separate nationality, and war in case of collision. To the foreigner, a new nation seemed to be coming into existence ; to us, the movement seemed frantic and short-lived. Both were in error. Our ignorance was, probably, essential to our success. The misconception on the other side of the water was founded on what may be called deceptive facts, and thus it had an important bearing on questions of belligerency and neutrality.

The questions whether there was a war between the Union and the Confederacy, and when it began, Professor Bernard does not discuss, but rather relies on American authorities, and mainly on the decision of our Supreme Court. The principal points in the opinion of the majority of the judges were that at and before the date of the President's proclamation of blockade a war was in existence ; that the blockade was an act of war instituted *jure belli*, not originating war but presupposing it ; and that from the fact of war all persons in the Confederate States acquired a hostile, and in foreign states a neutral, character. This neutral character exposed neutral vessels to capture on the high seas, — a liability which the fact of war alone, and no municipal regulation or exercise of public authority, could justify.

But a civil war, especially one where territorial lines divide the parties, has peculiarities of its own. It places individuals in the territory attempting to gain independence in new relations to the old Constitution and government. " A government supposed to be sovereign is at war with those that are supposed to be its subjects. There is a clashing of incompatible relations ; the same person being, if a loyal inhabitant of a

revolted territory, both a citizen and a public enemy, or, if a disloyal, and taken captive in actual war, treated as a subject of a foreign nation. And even the unlawful governments themselves may be regarded, in certain respects, as exercising a just authority. Such are the conflicts of right and fact in the case of a community having a political existence and endeavoring to change the form of that existence." Is it strange, asks Professor Bernard, that this anomalous condition should affect international relations also? Suppose such a community to commit wrongful acts against foreigners, to whom is the foreign state to apply for redress when the sovereign is helpless, and the insurgents may, ere long, lose their *de facto* existence? And if the foreigners have had commercial intercourse with the insurgents as well as with their sovereign, on what terms is that intercourse to be continued after an armed conflict has begun? On the sea especially, shall they submit to be searched by either or by both parties to the civil war? If they submit, for instance, to search exercised by the old established government only, and resist it when exercised by the revolutionists, they are not neutrals, but parties to the war, if that state of things can be called war which is unilateral, in which there is only one belligerent. They are thus forced in every such case, although they have stood aside altogether from the causes of the war, to become parties to it. The simple practical solution here, to use our author's language, "is found in recognizing both parties as belligerents; that is (to expand the phrase into an expression of its full meaning), as entitled, in respect of the neutral, to all those exceptional rights and powers with which sovereign states at war with one another are clothed by international law." The recognition of these rights draws after it the recognition of the means by which they are exercised,—of prize courts established in the manner known to the law of nations, of commissions issued by the government of the community attempting to become a state, of a flag by which its cruisers are known upon the sea.

It has sometimes been said that such states struggling into existence have a *right* to be recognized as belligerents when their organization and means enable them to carry on regular warfare, and they are in actual conflict with their parent states.

It is not only a concession on the part of the neutral, but it is obligatory upon the neutral, to recognize them. Our author objects to this language, but thinks that recognition has been sanctioned in such cases by the practice and opinion of nations, not solely with a view to the protection of the neutral, but on wider grounds of general expediency. The application of the ordinary rules of war to civil conflicts makes them more humane and regular, and restricts the sphere of their injury. Hence he is willing to adopt the rule, that recognition of belligerency ought not to be withheld, as being on the whole an advantage to the world.

Here, while we agree with our author in his doctrine as it respects recognition of belligerency, we are constrained to make one or two qualifying remarks. The first is that no rule of international law *forces* a neutral state into an impartial attitude between two such belligerents. It has its choice between aiding the parent or already existing state and entire neutrality. Alliances have existed between two sovereignties, stipulating the integrity of each other, and such treaties are considered lawful. In such cases there is a positive obligation to assist a state against a rebellion aiming at its political life. But the principle is the same when, after the outbreak of a rebellion, a state offers its assistance to another. It is assistance, not against a state known to nations, but against a nondescript thing which has as yet force and not law on its side, against a monster, out of the pale as yet of the law of nations, and which threatens the order of the world. It may grow into the proportions which civil order can protect and recognize, but it is well for human quiet if it fight its way into political existence by itself. International law is made for nations, and sides with the established condition of things. It does not frown on help offered by one friendly state to another, and yet it allows states to sit still and see their friends fight their own battles. It frowns on the two extremes of aiding in the disruption of a state, and of refusing to speak or even to act when gross inhumanity is practised towards rebels.

Another remark which ought to be made here relates to the length of time during which this rule of belligerency has been maintained in civil wars, and particularly in those which may

be called wars of disruption. There is no old precedent for or against the rule, if we are not in a grievous error. The countenance given by England to the Netherlands in their war with Philip is not one, for Elizabeth played fast and loose in her foreign relations as suited the policy of the moment, furnishing ground for war by proceedings beyond the limits of neutrality ; moreover, the war in the Low Countries was not a civil war ; the feudal prince of the Burgundian provinces was also king of Spain, and the war centred in the person of the Suzerain ; it had little to do with the remote state where he was king. We believe that there is no other precedent earlier than the time of our Revolution. The attitude of France during that struggle is well known. From half-concealed and yet disavowed assistance of our cause, the king, not long after Burgoyne's capitulation, jumped into recognition of the United States, and this, as it was expected, brought on war with Great Britain. In the *justifying memorial* which Gibbon wrote, much is said of breach of treaties on the part of France in aiding the rebellion of the Colonies, but the views of international law there expressed are vague and indefinite. The "Observations" of the Court of Versailles, in reply, contain the modern doctrine in tolerably clear words. "It results," it is there said, "from the stipulations of the treaty of Utrecht, that the king was not obliged to forbid his subjects, relatively to America, to trade either in merchandise not prohibited or in contraband of war, and that the only obligation imposed on him was not to protect this latter species of commerce. To put this truth in its full light, we may consider the United States under two different points of view,—as subjects of Great Britain, and as an independent nation. On the first hypothesis, they are subject to the prohibitory laws of their mother country. They are forbidden to have direct commerce with any country except England ; but how can this prohibition, which is merely domestic, be extended to strangers ? . . . It was thus that the court of London itself judged in regard to this point in the difficulties which it had with the court of Madrid, and which led to the treaty of Pardo. . . . If, on the contrary, we regard the Americans as an independent nation, or, if the expression pleases better, as a nation with which England is at war, then neutral nations have

no other obligations to fulfil save such as usages or treaties impose on them. Those which France has been bound to recognize are expressed in the articles nineteen and twenty of the treaty of Utrecht. The arrangements contained in those articles authorize commerce in merchandise which is not prohibited, and they do not require the king to forbid his subjects to convey arms and munitions of war to the enemies of Great Britain. They simply say that ships thus loaded, if met even on the high sea, may be stopped and declared good prize of war."

The relations of England and Holland, at the same epoch, became more and more complicated, until they terminated in war. Among other alleged grievances, Paul Jones carried two English vessels into the Texel. The British government demanded these vessels, on the ground that they were captured "by a subject of the king, who, according to treaties and the laws of war, fell into the class of rebels and pirates." The States-General refused to give up the vessels, but declared that they had given orders not to furnish the cruiser with munitions of war or with other things, except such as he needed in order to set sail and reach the nearest port where entrance would not be refused to him. In the course of the discussion, Sir Joseph Yorke, the British ambassador, remarks that "the directions of the States-General, when they require captains of foreign armed vessels to exhibit their letters of marque or commission, give authority, according to the general usage of admiralties, for treating as pirates those whose letters are perceived to be unlawful, as not emanating from a sovereign power." *

The same claim that the flag of the rebellious colonies could not be respected by neutrals was brought forward when the same sea-king, Paul Jones, carried three prizes into a port of Norway. The king of Denmark delivered them up, but the act gave rise to reclamations and demands on our part which ran through more than sixty years.

* See especially De Marten's *Nouvelles Causes Célèbres*, Tome I. Cause 2, p. 154, and Cause 4, pp. 492-495. For the prizes taken into a port of Norway, see the brief exposition of Mr. Lawrence in his new French Commentary on Wheaton, I. 176-179.

It thus appears that Great Britain at that time denied the present doctrine expounded by Professor Bernard, and now admitted probably by common consent over the world, while France and Holland received it. The doctrine was sanctioned at a subsequent time by our government through the whole history of the struggle between Spain and her South American colonies. Our memory of our own claims in the Revolutionary War, the natural tendencies of thought of a nation almost always neutral, and a most pardonable sympathy with the Spanish Americans in the effort to emancipate themselves from a foreign and unacceptable dominion, not only induced us to take a neutral position between Spain and her colonies, but made it seem right that moral support should be given to the revolters in public messages of the President to Congress: "It was natural," says President Monroe, "that our citizens should sympathize in events which affected our neighbors"; and his own sympathy comes to the surface more than once in mention made of the successes of the insurgents and in hopes that Spain might be induced to give up the contest.

In a recent message of President Grant touching the affairs of Cuba, which, we think, the country has cordially approved, the rule which has controlled the action of the government with reference to a revolting country pending its struggle is expressed in the following words of Mr. Monroe: "As soon as the movement assumes such a steady and consistent form as to make the success of the provinces probable, the rights to which they were entitled by the laws of nations, as equal parties to a civil war, were extended to them." We doubt whether these words express the rule on which either the United States or any other modern civilized nation has acted, and still more whether this can be made the basis of a rational policy. Steadiness and consistency alone, however great in degree, do not make success probable; it cannot be said that the laws of nations entitle any community which is not yet a state to any rights as a state, or to any treatment except that dictated by humanity; and it would be harsh in the extreme to deny to an oppressed people fighting for self-government the right (if so it is to be called) of belligerency, because their cause appears to be becoming hopeless. So much as this is

true, that we have not favored, and ought not to favor, rash and mad revolts, sympathy with which may greatly increase the woes of such as engage in them; but we believe that if the revolt has an organized government, the machinery of war, the spirit of persistence, and is carrying on a *bellum justum* by land or sea, the weight in the other side of the scale would hardly be taken into account. In other words, only the fact of war, as distinguished from insurrection or sedition, is to be looked at by third parties. Still less, if the side of the old government appeared to be prevailing, would it consist with the views of the present age to deny belligerent rights to the rebels, until they had been thoroughly crushed. Mr. Monroe, in his message of 1819, expresses the opinion that if it should "become manifest to the world that the efforts of Spain to subdue her provinces will be fruitless, it may be presumed that the Spanish government itself will give up the contest." It was then not yet manifest that their efforts would be successful. How much probability is needed to concede belligerency to revolt? We should rather say that, as long as the characteristics of such a movement make its success improbable, it would not be wise nor right to regard rebels as equal parties in war with an existing state, nor to treat them as having formed a state *de facto*, when this is not warranted by the facts.

There is a special point of some importance to which Professor Bernard calls attention. A person making war against a government which has a claim to his allegiance is without doubt a rebel; but is he properly called a pirate or justly treated as such, when captured on the ocean. The English called Paul Jones a pirate; and in the late war, William Smith, one of the crew of the *Jeff. Davis*, was convicted of piracy in one of our courts. The crime of a pirate may be tried in any court, and his ship is not the ship of any nation. The motive of a pirate is plunder, but a cruiser of a rebellious state or province is only endeavoring to distress his enemy in the way of armed contest, and so to conquer a peace. The pirate is an enemy of mankind, but the cruiser of a rebellious territory is the enemy of a particular state and of those who trade with it against the laws of war. The offended state, if it catches him, may call him traitor or pirate at its pleasure, but, as Mr. Ber-

nard asks, would the *animus belligerendi*, which is his motive, constitute the legal offence of piracy in the view of the tribunals of a country the executive government of which had not recognized the existence of war? And in one particular case an *argumentum ad hominem* may be pressed, which our author politely passes by, that if the crew of the Savannah or of the Jeff. Davis were pirates, Paul Jones was equally so, and therefore the Dutch were wrong in refusing to restore his prizes to Great Britain, and Denmark was right in surrendering them.

The next chapters of Professor Bernard's work are devoted to the course pursued by European governments at the beginning of our war, and especially to the queen's proclamation of neutrality. Into the vexed question whether this public act was premature and at the time unnecessary or not, we shall not enter. It was issued two days after Mr. Dallas had officially made known Mr. Lincoln's proclamation of blockade, and eleven days after the first news of that measure reached London. If measured by the precedents, whether of Europe or of the United States, it was entirely legal and proper. In placing the two parties to the war on an equality, it followed the uniform rule of our government; and if the proclamation of Mr. Van Buren, in 1838, could be styled, as it was, a proclamation "for the prevention of unlawful interference in the civil war in Canada," when no civil or military organization had been set up, much more might this British proclamation speak of hostilities as existing, after the fall of Sumter, and after the announcement of a war measure like blockade, between the United States and an organized, united community like the States styling themselves the Confederate States of America. It was followed in a large part of Europe, and even in the Hawaiian Islands, by notifications which prohibited all interference in the war, especially the construction of privateers for either party, and the entrance of the war vessels of either party into the harbors of the respective nations, except for a transitory purpose.

In his first instructions to the ambassadors at foreign courts Mr. Seward insisted on neutrality, and this neutrality could only be understood as "neutrality in a civil war between parties nearly equal, having as to neutral powers equal rights,"

at least such was neutrality in the parallel case of the South American provinces, as understood by Mr. Monroe, and such the neutrality allowed to us by Europe in our Revolutionary times. When in June, 1861, the British orders prohibited armed vessels of either party from carrying their prizes into waters governed by British law Mr. Seward seemed satisfied, and said that "it would probably prove a death-blow to Southern privateering." But soon a change of feeling and of policy appeared at Washington. The queen's proclamation was hasty, and was dictated by a hostile spirit. Moral support had been given to the Confederacy, which had inspired even the hope of speedy recognition. But the United States ought not to be considered as an equal party with the Confederacy. We could not regard the contest within our borders as a war, and we should treat Confederate privateersmen as pirates. Mr. Dayton was instructed to say to the French government that the United States could not for a moment allow that government to rest under the belief that they would be content to have the Confederate States recognized as a belligerent power by nations with which we were at amity. And long afterwards, when the country had become thoroughly alienated in mind from Great Britain, by the want of sympathy there with our cause, or by sympathy with the Confederates, the queen's proclamation was charged with being the fountain of our evils, it gave ground for damages, and was a virtual act of war. It is impossible now for any cool person to admit the justice of these assertions. Either the blockade imposed by the President, and supported by an armed force, was to be received as a fact by the British government, or, as they claimed, their vessels still had the right to trade with Southern ports, which were not under the fiscal control of the United States. The blockade implied a state of war; such was the judgment of the courts. Mr. Seward indeed says with truth, that the President did not in form declare the existence of war, and that the courts reached their conclusion that a state of war was then existing by a process of reason and argument. But it is of no importance what name the President gave to the state of things; if he had called it a difficulty or a sedition until the capture of Richmond, or until the surrender of Johnston's

army, this would not have altered the facts of the case. The Supreme Court looked at the facts, and found that they came within the definition of war from the time of the blockade. The foreign courts did the same ; and their agreement in their conclusion is proof that they both were right.

We come thus nearly to Mr. Bernard's conclusion, which we give in his own words: "I am unable to comprehend how it could be premature to provide for a state of circumstances which was actually existing at the time, or precipitate to announce in May a conclusion on which the President had begun to act in April; . . . or how the British government could be held justly answerable for the chimeras raised in sanguine imaginations by an act which was itself lawful and reasonable." If a hostile mind dictated an act not unlawful in itself, let that go for what it is worth ; let it awaken the indignation of the country, let that indignation seize its fair chance of retaliation in parallel circumstances, if it must be so ; but let us not try to overthrow international law, or to parry its force by charges of evil intention.

Mr. Bernard passes on to the offer made by the American government, early in the war, to accede to the treaty of Paris. The British and French ministers refused to negotiate in this matter, except on the understanding that it was to have no bearing whatever on the Southern difficulty, and so the negotiation fell to the ground. It is obvious that they were obliged either to take this position or to desert their existing position of neutrality in our civil contest. The engagement, as they understood it, would, if made, merely prevent the established government of the United States from issuing letters of marque to privateers ; it could have no effect on the legal relations of privateersmen belonging to the Southern Confederacy, because they were already *de facto* belligerents, and acknowledged as such. Mr. Seward was not willing to bind the United States, without securing the advantage of putting an end to Southern privateering, without, in short, including them in the negotiation.

The chapter on the case of the Trent is one where at present there will be little difference of opinion. Our government honorably admitted the mistake of its naval officer, and gained

character by so doing with foreign powers. Mr. Bernard, after giving in detail the history of this case, states certain propositions, of which we quote the last: "It is not lawful on the high seas to take persons, whatever their character, as prisoners, out of a neutral ship, which has not been judicially proved to have forfeited the benefit of her neutral character."

It is certain, from Mr. Bernard's expressed opinion, that the official appointment of the persons taken from the Trent, as envoys of the Confederate government, would not, from his point of view, affect the case. So much the more surprised are we to find in the work of another Oxford professor, Dr. Travers Twiss, published in 1863, the following judgment. He is speaking of the arrest of Marshal Belleisle on hostile territory by a power at war with his country: "It is quite another thing, observes Grotius, if any prince shall, *out of his territory*, contrive to surprise the ambassadors of another state, for this would be a direct breach of the law of nations. The case of the seizure of the envoys of the Confederate States of America on their way to Europe on board the British post-office packet, the Trent, by an United States cruiser, would seem to come within the prohibition laid down by Grotius. Their seizure was justly resented by Great Britain as a direct breach of the law of nations, and the envoys, at the demand of the British government, were set at liberty by the government of the United States, and allowed to proceed to Europe in a British vessel."

These words would seem to imply that the British government demanded back the arrested passengers on the ground of their public character. But such we do not find to be the fact. They are "certain individuals" in Lord Russell's despatch, "deux passagers" in M. Thouvenel's; and in the various remonstrances which at the same time came from other courts of Europe no stress is laid on their function. Besides, with submission, we affirm that the law of nations is misinterpreted. Grotius, if Dr. Twiss had looked a little further, would have told him that the rights of legation, of which the father of international law is speaking, are confined to persons sent by sovereigns to each other. And another great authority, with whom he must be familiar, would have informed him that

when Philip II. of Spain imprisoned and finally put to death the noblemen from the Netherlands, sent to him as deputies from a revolted territory, it was no offence against the law of nations.*

The blockade of the Southern ports, and questions which grew out of it, occupy several chapters of Mr. Bernard's work. In regard to its general conformity with the rules of naval warfare, he expresses himself as follows:—

“The blockade of the Southern coasts was certainly not free from irregularities, nor was it efficient at all points; it was instituted before the government had a competent blockading force in readiness; it covered, nominally, more ground than the force could really occupy; and at more than one place it was intermitted and resumed without notice. The British government was right, however, in forbearing to insist on these defects as grounds of complaint. The commencement of a blockade is seldom free from difficulties, and this had some peculiar difficulties. The government of the United States was exerting itself to overcome them, and had every motive to exertion. Credit should be given to blockading officers for reasonable activity and vigilance, until the contrary is shown. If irregularities can be proved, recourse may be had to a prize court, which will decree restitution, and, unless they are manifest and long continued, or appeals to the tribunals of the belligerent be met by a plain denial of justice, the neutral government will act wisely and properly in not taking the matter into its own hands.”

The question whether a blockade is effective is one of degrees. If a single vessel runs it in a week, and ten are taken, there is evidently a very great risk in the case. If only every other vessel is taken, there is still risk, but is it effective? The declaration of Paris only increases the difficulties which a good definition ought to remove, when it says that a blockade, “in order to be valid, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.” If, then, a number of vessels in the course of a year's blockade do get access to the enemy's port, shall we say that the blockade is no longer effective? The vagueness, we

* Grotius, II. 18, § 2, 1, says, “Qui extra hos legati sunt, provinciales, municipales atque alii, non jure gentium, quod inter gentes est diversas, sed jure civili reguntur.” See also Bynkershoek, *Quest. Juris. Publ.* II. cap. 3.

should answer, is essential to the subject. No blockade can keep out all the vessels that attempt to enter a port, if the profits of voyages rise at all in proportion with the risk. The difficulty of putting an end to blockade-running is increased, as Mr. Bernard remarks, by the introduction of steam navigation into modern warfare, which, while it gives greater scope and alertness to a blockading squadron, aids in a far higher degree the newest kind of blockade-runners, made for high speed, drawing little water, yet not deficient in stowage.

The number of vessels that ran the blockade led the Confederate emissary, Mason, to the hope that he could persuade the British government to pronounce the blockade ineffective. His long lists of such fortunate vessels, however, produced no effect. The reply was that the declaration of Paris was directed against paper blockades, that is, against such as are not sustained by any actual force, or sustained by a notoriously inadequate force, such as the occasional appearance of a man-of-war in the'offing; that the adequacy of the blockading force must be a matter of fact and evidence, and that the ineffectiveness of the blockade had not been urged in prize cases before the American courts; and that practical effectiveness was what was intended in the declaration.

It was an Herculean task for our government in the first years of the war to create a navy adequate to the work of blockade, and to that of scouring the seas in the protection of commerce and the pursuit of hostile cruisers. The thought occurred to some one that, if one or more of the channels into Charleston Harbor could be blocked up with stones, some of the ships employed there might be spared for other service. This experiment was tried both there and at Savannah. The main channel at Charleston received the stone-ships with their contents, but the obstruction did not pay for the trouble. We should not refer to this abortive attempt to supplement the blockade, if it had not been made the subject of something like remonstrances on the part of the British government, as being injurious to the general and permanent interests of commerce. Mr. Seward, in reply to the British ambassador, declared that it was a temporary measure, and that it would be incumbent on the United States to remove the obstructions as soon as the Union should be restored.

This is a good example of the way in which neutral power or the interests of commerce are advancing in their claims in the most modern period against war power. But were the claims just? We think not. If I have a right to cripple my enemy by bombarding and demolishing a town where neutral trade may have flourished, why may I not obstruct a harbor? Why not render the port of Charleston inaccessible as well as cannonade the city? If it had disappeared from the face of the earth, there were other and better sites for trade not far off. Besides, a clear precedent is afforded for such obstructions of ports by the case of Dunkirk, the harbor of which, by the treaty of Utrecht, was to be stopped up and rendered unfit for commerce, and remained in its condition of uselessness until the peace of Paris, in 1783. When Louis XIV., just after the peace of Utrecht, proposed to evade the terms of the treaty by digging out the port of Mardik, near Dunkirk, and connecting it with the sea by a channel sixteen hundred toises long, he was led to abandon the project in consequence of the protests of the British government. Every new treaty between France and Great Britain repeated the stipulations in regard to this port. What treaty can do the force of war can do, for neutral interests are affected in both instances alike. And in the case of Dunkirk, it is to be added that the commercial jealousy of England and Holland was the principal motive for insisting on the destruction of the harbor; and not apprehension of expeditions that might proceed from it to annoy the coasts of England; while our motive was simply the restoration of the Union in the way of regular war.*

The high price of cotton in Great Britain, and the want in the South, not only of munitions of war, but of many articles of comfort or necessity which formerly came from the Northern States, gave great activity to blockade-running, and in particular the harbor of Nassau was crowded with vessels using it as an *entrepôt* between Great Britain and the Southern coasts. Nor were there merchants wanting in New York who were

* This was written before the news came to this country that the Prussians are stopping up harbors in North Germany, and that, it would appear, on a large scale. We doubt whether any neutral will complain of this; and we feel certain that, if any complaints are made, they will be treated as being entirely groundless.

ready to send to that port articles intended for the blockaded districts of the Confederate States. To prevent this evil, a law of May, 1862, gave power to the Secretary of the Treasury to refuse clearance to any vessel whenever he had good reason to believe that the goods on board of it, whatever was their ostensible destination, were intended for places in possession or under the control of insurgents against the United States. The collectors of customs also were authorized, when they thought it necessary, to exact bonds from masters or owners that cargoes should be delivered at the place specified in the clearance, and that no part of the goods should be used "in affording aid or comfort to any persons or parties in insurrection against the authority of the United States."

These stringent requirements cut off, to a great extent, commerce with the port of Nassau, and complaints arose on the part of merchants there, which were supported by the British government. It was urged that the refusal of clearances to vessels laden with ordinary articles of peace was an injury to the neutral, and an infraction of treaties; that it really discriminated to the disadvantage of British merchants; and that the most arbitrary restrictions could thus be imposed on British trade. The United States government denied any such intention to injure the trade of any neutral; a relaxation of the order was allowed in respect to the exportation of coal; and the necessities of the case were pleaded as a reason for the act of Congress and the orders of the Secretary of the Treasury. Mr. Bernard decides that the act and the instructions violated no rule of international law, and were no infraction of our treaties with Great Britain. "A neutral port" — we quote his words — "in the neighborhood of one which a belligerent is actively blockading is ascertained to be carrying on a busy trade with the blockaded port, to afford a shelter and rendezvous for the ships employed in that trade, and a depot for their cargoes. Is the belligerent bound to permit goods to be despatched from his own ports, under his own eyes, to swell the stores of that depot? Is he bound to abstain from enforcing in his own ports regulations by which this may be checked and thwarted? and is he disabled from making such regulations by the circumstance that, under a general clause in a treaty of commerce, there is

to be reciprocal freedom of trade between the people of the neutral country and his own, subject to the laws of the two countries? This would not, I think, be a reasonable construction of the treaty." In truth, if a belligerent in a civil war could not, for his self-preservation, make regulations cutting off a roundabout trade between his own ports and blockaded ones, it would take but one step more to refuse him the right of blockading in such a war altogether; for prior treaties of commerce opened his whole territory to neutrals, whom he now seeks to exclude from entrance into certain harbors which he claims to be his own.

Owing to the proximity of a port like Nassau to our Southern coast, the subject of continuous voyages came before our courts, and it received an extension greater, perhaps, than had ever been given to it before. According to a view of the English courts which was admitted by our own, if a ship left port with an intention to break blockade, it was liable to capture anywhere on the ocean, and the same guilt rested on the goods, if the owners were privy to the intention. But in the late war, it would easily occur to European masters and owners, that a neutral port in the vicinity of the American coast was a convenient depot from which the goods might, in a blockade-runner made for the purpose, be transshipped to the interdicted harbors. If the goods had been conveyed for the purposes of honest sale to Nassau, there could be no violation of law in the transaction, even though the purchaser were from the Confederate States; a *bona fide* sale began a new transaction. But if an intention had existed at the start or on the voyage to convey the goods to a neutral port for the purpose of transshipping them to a place under blockade, our courts held that this would render both ship and goods liable to capture and condemnation,—the ship, provided the ulterior destination was the known inducement to the voyage between the two neutral ports, and the goods, even although orders were given by the owner to unlade them. Indeed, orders to sell would not take away guilt, unless the sale was honestly meant. In other words, the transaction was one and the same, notwithstanding the apparent interruption, and the "ships were planks of the same bridge, all necessary to the convenient passage of persons and property

from one and to another." If a vessel could not with impunity discharge her lading into a blockade-runner at the mouth of a blockaded harbor like Charleston, how could it make any difference if the goods were transferred from ship to ship at a neutral port like Nassau, or if a fictitious sale further disguised the transaction? Such was the expanded doctrine of "continuous voyages," as interpreted by our courts, which, doubtless, we should have resisted and complained of sixty years ago.

Another point of interest which came up in the war was the liability to capture of goods going up the Rio Grande. Where a river separates two states, one only of which is engaged in war, there can, of course, be no blockade of the stream as a whole, and thus there was free access for goods to Matamoros, opposite to Brownsville. It became early in the war a place of great trade, so that, as was said, more than sixty vessels were cleared from New York in little more than a year, having this for their destination. Complaints arose on the part of the British government, when some vessels were seized at the mouth of the river with contraband goods on board, ostensibly intended to be sent up stream in lighters to the Mexican town. The reply was, that the vessels captured intended to send their freights to the insurgents on the American bank, and that this was a question upon which a prize court must pronounce a decision. The peculiarity of the cases of capture on this river seems to be that the doctrine of ulterior destination was applied to goods where the further transportation was even overland, thus making them liable to capture and condemnation, no matter how their ulterior destination was to be reached.

The case of the *Emily St. Pierre*, a vessel from Calcutta, captured in 1862, not far from the harbor of Charleston, presents a remarkable instance of the changes of opinion on points of international law which changes of national interest bring with them. She was put in charge of a prize crew to be taken to Philadelphia, but those of the captured crew who were left on board regained possession of her and carried her into Liverpool. A claim was now made by our government for the vessel, on the ground that the rescue was fraudulent and an act of violence towards a lawful cruiser. On the British side it was

replied that, as the rights of the owners had never been extinguished by a prize court, to restore her to her captors would be to take her out of her owners' possession. This would be to enforce the rights of the belligerent to his capture,—a thing with which the municipal law of the neutral has nothing to do. During the correspondence relating to this vessel, it was discovered that a similar case occurred in 1800, only that the parties had then taken positions just opposite to their present ones. Great Britain then made demands for the restoration of a rescued prize, while the United States refused compliance on the same grounds which Great Britain now urged. "There can be no doubt," says Professor Bernard, "that the American government was right in 1800, and wrong in 1862, and the English government wrong in 1800 and right in 1862. The enforcement of blockades is left, and rightly left, by the law of nations to the belligerent alone. They are enforced by the exercise of the belligerent right of capture; and this right is the weapon which international law places in his hands for that express purpose. Capture is an act of force which has to be sustained by force, until the property in the vessel has been changed by a sentence of condemnation. If she escape meanwhile from the captor's hands, it is not for the neutral to restore her to him. Resistance or a rescue is a distinct offence, . . . drawing after it a distinct and appropriate penalty,—confiscation. But here again it is for the belligerent to inflict the penalty, and it is not the business of the neutral to help him to do this either by recovering his prize for him or by treating the act as a crime." If the neutral were bound to do this, we might add, he could only be bound by a treaty of extradition.

The latter part of Mr. Bernard's work is chiefly occupied with the subject of the ships procured in England by Confederate agents, and the questions to which they gave rise. The history of all these vessels is given with more or less detail, and, of course, the *Alabama* assumes the place of importance in this discussion. It is not our intention, in the present article, to enter at large into a matter which has called forth so much diplomatic correspondence, so much angry debate, so much warlike rhetoric as this. We would not, if we could, put an end to the lull which has succeeded the blasts of

public feeling, or revive those heats which led to the summary rejection of the Johnson treaty. It is to be hoped that some one who has "had perfect understanding of all things from the very first," who can unite dignified calmness and impartiality with a sense of justice and a love of truth, will bring this vexed subject at the proper time and in the proper way before the country, and will thus lead public opinion to a policy which will be at once just and consistent with our old principles of neutrality. In Mr. Bernard's exposition of the Alabama case we find nothing to complain of; we meet here the same candor and truthfulness which is obvious throughout the work. The facts are stated with exactness, and supported by the proper documentary evidence. His opinions in regard to the question whether the British government was culpable or not in allowing this vessel to go out unarmed from the port of Liverpool are freely but not confidently expressed on the side of his own country. If they have preponderating weight, they will, in the end, influence opinion on both sides of the water. We do not intend to enter into the discussion which they would require, as arguments on a point of international law, but feel compelled to pass them by in respectful silence. We make, however, the following observations on the case:—

1. The vessel, afterwards called the Alabama, was confessedly built as a ship-of-war for some foreign government; and one person at least made oath that he was engaged as a seaman on board of her, and was informed by the man who hired him that the vessel was going out to the Confederate States of America. The individuals who were sworn to be busy about this vessel, and one of whom was described as her master, were reputed to be Confederate agents.

2. When the government issued orders to detain the vessel, it admitted that there was *prima facie* evidence for so doing. If the delay in coming to this conclusion was prejudicial to the United States, this would be a fair point to be pressed in the way of diplomacy or before a court of arbitration.

3. Did the adroitness of the Confederate agents, in evading the Foreign Enlistment Act, by sending the vessel without armament into foreign waters, there to be supplied from England with a crew, guns, and all the necessaries of war,—did this trick

free the government from all responsibility in regard to the injuries inflicted by the *Alabama* upon vessels of a friendly power. It is one thing to say, as eminent English lawyers say, that no offence against either the common law or the Foreign Enlistment Act was committed by the mere building of a ship, apparently adapted for warlike purposes, and by delivering her, unequipped for war, to the known agent of a foreign belligerent power, and another thing to say that there would be no wrong done *to a neutral* by such a proceeding. Suppose there had been no such Enlistment Act, as there was none until a few years since, do the rights of other nations end with the provisions of municipal law? The law of England, it is said, afforded no adequate protection to ambassadors until 1708. Would it have barred the claim of a friend, whose ambassador had been maltreated, to say that English law could not protect him? If the Confederate agent at Liverpool had sent word to the British Secretary of State that he had had a vessel of war built for his government, and intended to take it out to sea without an armament, that, furthermore, he had made arrangements to have guns and a crew sent from other parts of England to be put on board of her at a convenient place, so far as we can gather from the first lawyers of England, the statutes could have put no obstacle in his way. He might have laughed at the Foreign Enlistment Act, and need have feared no punishment. But either we on this side of the water are grievously in the wrong, or international injuries are wholly independent of state law; if there is no law, or an inefficient one, that is no plea against foreign claims: the obligations of nations are the main points in the case. Let it be made to appear that no wrong known to the law of nations is committed when a ship-builder on neutral soil constructs a vessel of war, which is to be employed avowedly in destroying the commerce of a friendly state, or let it be made to appear that a contrivance which puts the threads of an armament together in foreign waters, when they were evidently spun in one and the same country may be overlooked, and the United States can have no just claim for damages in the case of the *Alabama*. But in that case it may well be asked, Of what value are international laws of neutrality, if the neutral subjects can do what they will, and if war is fed and prolonged by their cupidity?

But it would be of small importance if we could fasten on Great Britain the charge of negligence or of insufficient protection to friendly states against hostile expeditions begun in her territory. Safety in future wars, and the prevention of heart-burnings between countries of the same race and with the same institutions, demand some change for the future. That change may proceed either from an alteration in English law or from some improvement in, or modification of, the law of nations.

Both Mr. Bernard and Mr. Bemis, we believe, remark that the English Foreign Enlistment Act is, in most of its provisions, more stringent than our act of 1817, after which it was modelled. The differences between the acts, besides those which are to be referred to the attempt in the English act at more exact language, are these two: first, our act requires bonds to be given, in the case of armed vessels sailing out of our ports, which belong in whole or in part to citizens, that such vessels shall not be employed to cruise against the subjects of any friendly foreign power: secondly, the collectors of customs are required to detain vessels built for purposes of war when about to leave our waters, of which the cargo shall principally consist of arms and munitions of war, whenever it is made probable to them that such vessels are intended to be employed in cruising against the subjects of friendly states, and such detention shall continue until the President gives his decision in the case, or until bonds are given, as required by the provision already mentioned. *The original bill prevented citizens of the United States from selling vessels of war to subjects of any foreign power, but that provision was struck out by the Senate.*

Mr. Bernard remarks that neither of these existing sections of our act could have been applied in the cases where complaint arose between the two countries; the Alabama, for instance, was not a vessel owned even in part by subjects of Great Britain, nor was its cargo, when it left port, composed of arms and munitions of war. The two laws would have had precisely the same application in a case like this. The differences as it respects the *execution* of the respective laws are thus stated by our author: —

“The English law, although in terms more stringent, appears to have

been enforced in practice less freely and readily than the American, the working of which is assisted by a more efficient local machinery (the institution of 'district attorneys'), and is also less embarrassed, perhaps, by a fear of illegally interfering with private rights, — a fear always present to the mind of an English public servant, and kept alive by the constant responsibility of every subordinate to his chief, and of the chief of every department to Parliament. Greater reliance is there placed on local officials, and a large measure of discretion given to them, and the questions of fact on which the legality of a seizure depends, are not submitted to a jury."

There is in our system a greater capacity of vigorous administration on the part of the general government than belongs to the system in Great Britain ; but we fear that we must add that public opinion can paralyze such vigor. It may happen that, where assistance to one of the belligerents is popular, the district attorney may share in the sympathy and neglect his duty, or may be overawed by the prevailing sentiment. Have we not had instances of hostile and guilty enterprises set on foot within the last twenty years, where the inferior officials of the government closed their eyes until the bird had flown ?

The charges of the inefficiency of English law, whether just or not, have led to projects for its improvement. A commission appointed in 1867 to consider and report any changes which it might be desirable to make in the neutrality laws, reported the next year to the effect that "the prohibitions of the act should be enlarged ; that the despatching of a ship with knowledge that she would be employed in hostilities by a belligerent, and the building of a ship with intent that she should be so employed, after being fitted out and armed *within or beyond* her Majesty's dominions, should be embraced within these prohibitions. They added a recommendation, probably of greater practical value, that where reasonable and probable cause should exist for believing that a ship was about to be despatched contrary to the enactment, or, having been built or fitted out contrary to the enactment, was about to be taken out of the dominions of the crown, power should be given to arrest and detain her, on a warrant issued by the Secretary of State, or, within the limits of a colony, by the governor ; the burden of proof that no violation of the act had been committed or

was intended to be thrown in every case on the owner of the ship so arrested." This project of an amendment of the existing neutrality laws has been submitted to the government, but no legislation, unless of late, has carried it out. The changes suggested seem to us excellent, and they go far beyond our laws of a similar character in protecting friendly belligerents against unneutral acts. If embodied in laws, they would confer new honor on that enlightened spirit which has led to so many advances in legislation during the last fifty years. And thus there would be a proof to all states, that the nation which is at the head of the world's commerce has no intention to promote its own commerce in questionable ways, but rather has a deeper conviction than any other state that its prosperity is connected with universal peace.

But is it enough to make the neutrality laws of the leading states more strict towards hostile expeditions undertaken within their borders, while the law of nations remains as it is? Let us consider for a moment what can now be done by neutrals when a war breaks out between their friends. We have so generally occupied a neutral position since our existence as a nation began, and our trade, when the rest of the world was at war, consisted so generally in innocent articles, — like provisions and naval stores, — that we were unprepared, at the breaking out of the war, to regard as lawful the kinds of trade which the law of nations does not forbid. Nay, more, we complained of England for doing that which we ourselves did, and which our courts did not condemn during the wars of the South American provinces. The law of nations, as interpreted by our courts, requires no neutral to interfere for the prevention of a trade in contraband carried on by its citizens or subjects, or to take active measures against ships purposing to run a blockade instituted by a friendly state. It is held, in a technical and formal way, that a contraband trade begins when the articles so called are afloat on the high sea; and there is a general agreement that the neutral is not to be put to the cost and trouble of keeping his subjects from such a traffic. The police of the seas belongs to the belligerents, and the violation of neutrality in carrying contraband, and in breaking blockade, it is for him, and for none else, to notice. How often were

Judge Story's words quoted, especially by British writers a few years back, that "there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation."* It is unnecessary to say that the risk of confiscation has never been so great, and probably never will be so great, that the gains of contraband trade do not cover the losses. Neutrals thus supply the food upon which war lives, and supply it alike to either belligerent that can pay for it, so that until exhaustion comes upon one of the combatants, the harvest of the neutral trader goes on. Is this state of things the best for the interests of humanity and the general welfare? Is it not better for neutrals, on the whole, that wars should be short and few? And if so, may it not be said to be the duty of nations to agree that contraband trade shall be prohibited at the commencement of a voyage? This can be done, as it seems to us, without great difficulty, by placing vessels carrying such articles under heavy bonds that they shall not be conveyed to the ports of a friendly nation engaged in war. We would put blockade-runners, as far as possible, under the same penalties, and would wish to have Dr. Phillimore's suggestion adopted, that all exportation of munitions of war by merchant ships of the belligerents should be strictly prohibited. We should be glad also to have violators of neutrality considered as prisoners of war, and treated as such. That the world can be brought to all this with ease we are not credulous enough to believe; but we believe that if two leading nations were to make a treaty containing such stipulations, the probability of their keeping peace with one another, and with the rest of the world, would be decidedly increased.

May we be permitted, before we close, to make another suggestion looking towards a reform in the law of nations? It has been more or less the practice of cruisers for a long time, when they took an enemy's vessel, and it was inconvenient to send it into port for adjudication, to destroy it. The French went so far as to burn a number of *neutral* American vessels

* Case of the *Santissima Trinidad*, 7 Wheaton, 340.

for violations of the Berlin and Milan decrees. The Confederate cruisers in the late war burnt only American vessels. This harsh measure, if applied to neutrals by a belligerent who is not as yet a lawful and acknowledged power, would be unsafe, for there might be no remedy for a wrong use of it. But is it a desirable exercise of power, where even a sovereign state, which can make compensation for injuries done by its cruisers, deals thus with its enemy? Contracts of ransom are falling into disuse; they are frowned upon by the municipal law of many European states, especially in the case of the capture of neutral vessels. But whatever may be said against them, they are better for the world than burning vessels, which after all might turn out not to be lawful prize. At all events, it is time that this most savage act of war on the sea, so far beyond the ordinary destructions of war on the land, should be prohibited by the common voice of nations.

The close of Professor Bernard's work is occupied with discussions on the rights of persons subjected to draft in the United States, who claimed to be British subjects, and with a sketch of the negotiations since the war, which ended in Mr. Reverdy Johnson's convention. Then follows a concluding chapter, in which he notices the inconsistency between our old positions when we were neutrals and those which we took when we became belligerents. He has a right to do this, and such inconsistency has been freely admitted in this article. We are sorry, however, that he should feel called upon to use the words, "It is the government of the United States which has asserted, rightly or wrongly, the claim of a belligerent to capture a neutral vessel conveying a diplomatic agent of the enemy from one neutral port to another," when that government abandoned its position, and in fact acknowledged its mistake. But his sense of justice leads him to express himself in the following words, which we are glad to cite:—

"I do not recall these facts in order to throw blame on the American government, but because they show how the point of view from which a state regards questions of international right and expediency may be affected by the situation in which it is placed, and how rapidly even cherished opinions may give way before a great and violent change of circumstances. The history of international law is full of such varia-

tions and inconsistencies. We, ourselves, are not clear from them. Among the complaints urged by Mr. Seward and Mr. Adams, there are some which seem but reproductions of those addressed by Lord St. Simon and Sir Joseph Yorke to the French and Dutch governments, during the war of American Independence. And it would be easy to draw an effective contrast between the severity with which Great Britain formerly enforced the rights of belligerents, and the warmth with which she lately asserted the rights of neutrals."

And in this same strain of candor he proceeds to set forth the painful and trying position in which the United States was placed, when struggling for their political existence with a mighty revolt. It is this sense of justice, which appears in almost every chapter, that entitles him to our sincere respect. He gives, it is true, some hard blows to some of the doctrines insisted upon, on our side, during the late war. It is good, however, when a man with no especial sympathy for a cause, but with a decided love of truth, can survey the ground where nations have contended with a judicial eye, and determine the landmarks that are to stand for the future. Only such discussion can abate excessive pretensions, can bring the opinions of nations into harmony, and can settle the principles of international law so firmly that old errors shall not be from time to time revived.

THEODORE D. WOOLSEY.

ART. II. — *Contributions to the Theory of Natural Selection. A Series of Essays.* By ALFRED RUSSELL WALLACE, Author of "The Malay Archipelago," etc., etc. London and New York: Macmillan & Co. 1870. 8vo. pp. xvi. and 384.

FEW scientific theories have met with such a cordial reception by the world of scientific investigators, or created in so short a time so complete a revolution in general philosophy, as the doctrine of the derivation of organic species by Natural Selection; perhaps no other can compare with it when we consider the incompleteness of the proofs on which it still relies, or the previous prejudice against the main thesis implied in it, the